SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1964

PETITION FOR CERTIORARI

No. 911

HYLAS N. HASTINGS,

Petitioner,

v.

CARL D. MANN, t/a Mann's Harbor Marina, Mann's Harbor, North Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Norfolk, Virginia
Proctor for Petitioner

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IN THE

Supreme Court of the United States

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Petitioner,

v.

CARL D. MANN, t/a Mann's Harbor Marina, Mann's Harbor, North Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

Hylas N. Hastings prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above cause on January 11, 1965.

CITATIONS OF OPINIONS BELOW

The opinion of the District Court below is reported in 226 F. Supp. 962. The opinion of the

Circuit Court of Appeals, printed in the appendix hereto, has at the time of the drafting of this petition not been published in West's Federal Reports. However, the same is referred to in detail in 33 L.W. 2373.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered in this cause on January 11, 1965. The jurisdiction of this Court is invoked under the provisions of Title 28, U.S.C. §1254 (1).

STATEMENT

The petitioner, Hylas N. Hastings, is a resident and citizen of the State of Virginia. The respondent, Carl D. Mann, is a resident and citizen of the State of North Carolina, and trades as Mann's Harbor Marina, Mann's Harbor, North Carolina. The respondent owns and operates at Mann's Harbor, North Carolina, a boat launching ramp used for the purpose of launching and retrieving small boats. For the use of this ramp the respondent charges $1.00. As all boat ramps, the boat ramp in question commences on land and proceeds into the waters of Pamlico Sound at an angle, where it is secured to the bottom of said Sound. The major portion of this boat ramp is located under water. On April 19, 1963, the petitioner paid to the respondent or his duly authorized agent the sum of $1.00 in consideration for using the respondent's boat ramp for the purpose of launching the petitioner's motorboat. While in the process of launching his motorboat and while on the submerged portion of respondent's boat ramp and while standing thereon in the navigable waters of Pamlico Sound, due to the faulty and unsafe condition of the respondent's boat

ramp, the libellant was caused to fall and as a result of said fall, sustained serious injuries which are of a permanent nature. The petitioner's fall occurred and was consummated while standing on a submerged portion of the respondent's boat ramp located well within the navigable waters of Pamlico Sound. As a result of this accident, the petitioner has sustained a 30% permanent disability of his right leg.

The action in the District Court was commenced by the filing of a libel against Carl D. Mann, trading as Mann's Harbor Marina, *in personam,* on October 24, 1963. On November 8, 1963, the respondent filed an exception to the libel and a motion to dismiss on the grounds that the United States District Court sitting in admiralty did not have jurisdiction over the subject matter of the libellant's libel. On January 28, 1964, the libellant, pursuant to order of court, filed an amended libel setting forth more fully its factual contentions. Thereafter, the parties litigant each submitted to the District Court a memorandum in support of their respective positions relative to the question of jurisdiction. On March 6, 1964, the District Court filed its memorandum opinion. On March 19, 1964 the final decree dismissing libellant's libel was entered.

On May 21, 1964, the libellant herein filed his notice of appeal to the United States Circuit Court of Appeals for the Fourth Circuit. Thereafter, briefs were filed by both parties litigant, and on September 21, 1964, the matter was fully argued before the Court of Appeals for the Fourth Circuit. On January 11, 1965, the judgment of the District Court was affirmed by the appellate court below.

QUESTION PRESENTED

WHETHER A UNITED STATES DISTRICT COURT SITTING IN ADMIRALTY HAS JURISDICTION OVER A SUIT AGAINST A MARINA FOR INJURIES SUSTAINED BY A PATRON WHILE ATTEMPTING TO LAUNCH HIS MOTORBOAT OVER THE MARINA'S FAULTY BOAT RAMP, AND WHICH INJURIES WERE SUSTAINED ON THAT PORTION OF THE BOAT RAMP WHICH WAS SUBMERGED BENEATH NAVIGABLE WATERS OF THE UNITED STATES.

REASON FOR GRANTING THE WRIT

The question presented in the case at bar is a most important one, as it concerns directly the jurisdiction of a United States District Court sitting in Admiralty.

The Admiralty jurisdiction of courts of the United States was last clearly defined by this Court in 1866 in the decision of *The PLYMOUTH*, 70 U. S. (3 wall) 20. In the lapse of approximately 100 years since that decision, many changes have taken place in the maritime industry, especially is this so in the last decade, when the small power boat has become a dominant factor upon our navigable waters.

In *The PLYMOUTH*, this Court, in defining the Admiralty jurisdiction of Courts of the United States, laid down the locality rule, stating:

> "It is admitted by all authorities that the jurisdiction of the admiralty over maritime torts depends upon locality — the high seas, or navigable waters within admiralty jurisdiction."

In the case at bar the tort in question occurred when the petitioner fell from and upon the submerged portion of an allegedly faulty boat launching ramp located in the waters of Pamlico Sound, admittedly navigable waters of the United States. However, the Court below has limited the locality doctrine to torts occurring on vessels on navigable waters. In its opinion the Court below concluded:

> "The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters."

This conclusion of the appellate Court below is in direct conflict with *The PLYMOUTH*, supra., where this Court state unambiguously:

> "Every species of tort, however occurring, and whether aboard a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance."

The decision of the appellate Court below is also in direct conflict with two recent decisions rendered by sister appellate Courts.

In *Weinstein* v. *Eastern Airlines, Inc.*, 316 F (2d) 758 (1963) Cert. denied 375 U. S. 940, 11 L. ed 2d 271, 84 S. Ct. 343, the United States Court of Appeals for

the Third Circuit in holding that Admiralty jurisdiction encompassed tort claims arising out of an airliner crash in Boston Harbor, stated:

> "The critical factor determining whether a tort claim comes within the broad statutory grant of Admiralty jurisdiction is the situs of the tort; i.e., the place where it happened. *If the tort occurred on navigable waters, the claim is one that lies within the jurisdiction of the Courts of Admiralty; nothing more is required.*" (Italics added for emphasis.)

It is interesting to note that the Third Circuit in the *Weinstein case, supra.*, has adopted an enlightened view recognizing that changes in maritime conditions must of necessity give rise to a broader interpretation of the Admiralty's jurisdiction. Thus the Court stated at page 763:

> "Concepts of admiralty tort jurisdiction should not and cannot remain static and unchanging."

Such an enlightened view would we submit clearly include the tort in the case at bar well within the admiralty jurisdiction. Such a view, we further submit, is in direct conflict with the concept of admiralty jurisdiction now held by the United States Court of Appeals for the Fourth Circuit.

Likewise, the decision of the appellate Court below is in direct conflict with the very recent decision of the Circuit Court of Appeals for the Sixth Circuit in the matter of *Interlake Steamship Co.* v. *Nielsen*, decided on December 3, 1964, and reported at 338 F

(2d) 879. In the *Interlake case, supra.*, the libellant's decedent died of a skull fracture occasioned by impact upon the frozen waters of Lake Erie when the car he was driving went off the end of a dock where his vessel was berthed. The District Court held that there was no admiralty jurisdiction as the impetus which put in motion the sequence of events resulting in the fatal accident had its origin on land. In reversing the District Court on this point the Appellate Court stated:

> "It seems obvious to us that the trend of case law, the impact of the Admiralty Extension Act and the effect of Calbeck, have all pointed in the direction of expanding the boundaries of admiralty jurisdiction toward land. It does not require any great clairvoyance to hold that at present admiralty jurisdiction clearly encompasses the navigable waters immediately adjacent to a dock."

Again a Circuit Court of Appeals speaks of "expanding the bounds of admiralty jurisdiction." This, we again submit, is the correct view and accords with that now held by the Third Circuit Court of Appeals and likewise is in direct conflict with the concept of admiralty jurisdiction espoused in the case at bar by the Appellate Court below.

A boat launching ramp is a structure designed for maritime uses and the petitioner at the time of his injury was at a place within the admiralty jurisdiction. It is not material to the question of jurisdiction that the submerged portion of the boat launching ramp from which and upon which the petitioner fell was secured to the bottom of Pamlico Sound, any

more than it was material in the *Interlake case, supra,* that the decedent cracked his skull on the frozen waters of Lake Erie rather than on a submerged piling of the pier from which he fell. The fact that is material in *both* cases is that the injury was consummated upon navigable waters of the United States.

CONCLUSION

In holding that admiralty is without jurisdiction in the case at bar, the Court below has ignored the basic premises laid down in *The PLYMOUTH, supra,* that "every species of tort, however occurring, and whether aboard a vessel or not, if upon . . . navigable waters, is of admiralty cognizance." Likewise, the decision of the Court below is in direct conflict with the decision of the Third Circuit Court of Appeals in the *Weinstein case, supra,* and the Sixth Circuit Court of Appeals decision in the *Interlake case, supra.*

Lastly, it is of extreme importance to all Courts of the United States that this Court, in the light of today's encounters, define with clarity the precise limits of the Admiralty Courts jurisdiction. *A fortiori,* this case warrants certiorari.

Respectfully submitted,
WALTER B. MARTIN, JR.
Proctor for Petitioner

IN THE

United States District Court

FOR THE EASTERN DISTRICT OF NORTH CAROLINA
ELIZABETH CITY DIVISION

No. 283 – Admiralty

HYLAS N. HASTINGS,
Libelant

v.

CARL D. MANN, t/a
Mann's Harbor Marina,
Mann's Harbor,
North Carolina
Respondent

OPINION and ORDER

LARKINS, District Judge:

SUMMARY

This is an action in admiralty brought to recover damages for personal injuries allegedly sustained by libellant while he was standing on respondent's boat ramp attempting to launch a small outboard motorboat. The respondent has filed an exception to the libel

and a motion to dismiss on the ground that the cause does not come within admiralty jurisdiction. Both parties have submitted memoranda pursuant to the motion and, at the request of the court, they have stipulated as to the description and construction of the boat ramp. A photograph of the ramp was also submitted.

Having fully considered the pleadings, briefs, and stipulations, the court makes the following

FINDING OF FACT

At the time of the accident the respondent was a resident and citizen of the State of North Carolina, and traded as Mann's Harbor Marina at Mann's Harbor, North Carolina.

On or about April 19, 1963, the libelant paid to the respondent one dollar ($1.00) for the use of respondent's boat ramp to launch libelant's outboard motorboat. The ramp sloped and was partially submerged by the waters of Pamlico Sound, a navigable body of water. Libelant was standing on the ramp in the water to launch his boat at which time he fell and was injured. He alleges that his injury was caused by the unsafe condition of the ramp.

The following stipulations which the litigants entered into are adopted as facts by the court:

1. The ramp is constructed of creosoted lumber lying on the ground on the respondent's property, and extends to and beyond the shore line into the water

along the bottom approximately seven to eight feet depending upon the tide, the extreme end of the ramp under the water being about four feet below the surface of the water depending upon the tide.

2. The ramp is flush and level with the ground attached to sills buried into the ground.

3. The ramp does not float with the tide but is bolted and attached to the ground with stobs and creosote posts.

4. The ramp is used to accommodate boat trailers which are backed onto the ramp by automobiles or trucks.

The sole question for the court is: Do these facts, as alleged and stipulated, constitute a claim upon which relief can be granted within the jurisdiction of admiralty?

CONCLUSIONS OF LAW

In 2 Am. Jur. 2d Admiralty § 82 the following summary is made:

> "Except in the case of death resulting from the tort, the general rule is that the place where the injury or damage occurred, not where the tort occurred, determines whether it occurred on navigable waters or on land. For the purpose of determining admiralty jurisdiction, the tort is deemed to occur, not

where the wrongful act or omission has its inception, but where the impact of the act or omission produces such injury as to give rise to a cause is that of the thing injured, not that of the agency causing the injury. Where, for example, a floating vessel is damaged by a structure on the land, as in a collision with a drawbridge, the tort is maritime. Conversely, admiralty is without jurisdiction in case of tortious injury to persons or tortious damage to property, where the consummation of the tort is on the land though it may have originated on the water, except as this rule is modified by the Admiralty Jurisdiction Extension Act of 1948."

Section 84 sets forth this observation:

"Docks and wharves are considered to be extensions of the land to which they are attached, so that admiralty ordinarily has no jurisdiction of a tort that occurs on a dock or a wharf, or any other extension of the land. . . ."

2 C. J. S. Admiralty § 62 reads, in part, as follows: ". . . A suit for an injury on land, as where an injury is sustained on a wharf or dock or on a gangplank by a person leaving the dock, or in an excavation under water, is without the jurisdiction of admiralty. . . ."

What the court is faced with here is the legal construction and treatment of a boat ramp. As the

stipulations point out, the boat ramp in question is made from lumber, extending from the shore line on a downward incline into the water. The libellant was standing on the ramp and in the water when he fell, evidently hitting the ramp, although there is no allegation to that effect.

A boat ramp, like a wharf, dock, pier, or landing, is an extension of the land. It is fixed and immovable and is usually bolted or fastened securely to the land. Its purpose, of course, is to extend the land into the water at a slight grade in order to accommodate vehicular boat trailers which are backed or rolled thereon.

In *Netherlands American Steam Navigation Company v. Gallagher*, 282 Fed. Rep. 171 (1922), the court stated:

> "The injury to the plaintiff happened on the wharf—in other words, upon the land; for it is clearly established that wharves and bridges, being fixed and immovable, are a part of the land to which they are attached, whether they project over the water or not. Injuries done upon them are not maritime torts; consequently they are not within the admiralty jurisdiction, because not done upon the sea. The Rock Island Bridge, 6 Wall. 213, 18 L.Ed. 753; The Neil Cochran, 1 Brown's Adm. 162, Fed. Cas No 7.996; The Ottawa, Brown's Adm. 356, Fed. Cas. No. 10,616. In the Rock Island Bridge case the court held that, though bridges and wharves may aid

> commerce by facilitating intercourse on land, or the discharge of cargoes, they constitute no part of the high seas or navigable waters, and no maritime lien can arise with reference to them, as in the case of vessels, steamers, and rafts, and upon goods and merchandise thereon."

So it is with a boat ramp. Because it is built to the land, fixed and immovable, it is considered to be a part of the land to which it is attached, even though it is partially submerged in navigable waters. True, the boat ramp facilitates the launching and docking of pleasure craft, but it is constructed principally to receive and accommodate land carriers, mainly, boat trailers. In this respect boat ramps are analogous to wharves which are constructed to handle fork-lifts, tow-motors, and other vehicles used for loading and unloading.

> "The dividing line between the admiralty and the common-law jurisdiction is correctly stated in Benedict's Admiralty (4th Ed.) § 232. It is there pointed out that the American courts have drawn the dividing line according to the locality where the substance and consummation of the injury has occurred. . . ." *Netherlands American Steam Navigation Company v. Gallagher,* supra.

The locality test is well entrenched in the law

today. In *McGuire* v. *City of New York,* 192 F. Supp. 866 (1961), Judge Dawson said:

> "The basis for admiralty jurisdiction must be a combination of a maritime wrong and a maritime location. A maritime wrong generally has been concluded to be one which in some way is involved with shipping or commerce. . . ."

In the instant case the injury allegedly occurred while libelant was standing on the boat ramp in a few feet of water. Thus, the locality of the tort was on land or an extension thereof. No maritime wrong has occurred here, and the fact that libellant was standing in navigable waters is of little import. In *McGuire* v. *City of New York,* supra, the court stated,

> "Libelant takes the position that any tort which occurs in navigable waters is cognizable in admiralty. The Court is unable to agree with this contention."

In this same opinion, at page 871, the district court gave this summary:

> "Admiralty law is, in fact, the law of commerce. It was engendered as a result of the needs of commerce and flourished because of those same needs. Where it was feared that local ordinances or decisions might unduly impinge on international or interstate commerce, local statutes were held inapplicable

in the face of the need for uniformity in maritime law. The touchstone has been whether the action, tort for example, was not merely one of local concern but was in fact a thing having an intimate relation with navigation and interstate and foreign commerce. *Robins Dry Dock & Repair Co.* v. *Dahl,* 1925, 266 U. S. 449, 457, 45 S. Ct. 157, 69 L.Ed. 372; *Panama R. R. Co.* v. *Johnson,* 1924, 264 U. S. 375, 386, 44 S. Ct. 391, 68 L.Ed. 748; *Hartford Life Ins. Co.* v. *Douds,* 1923, 261 U. S. 476, 481, 43 S. Ct. 409, 67 L.Ed. 754. If If that was the case then admiralty was held to have sole and exclusive jurisdiction.

"Admiralty jurisdiction as a protective companion to commerce has grown with the needs of commerce and retained a marked degree of flexibility. It is proper that admiralty jurisdiction be extended where commercial necessity so dictates. Morrison, The Remedial Powers of the Admiralty, 43 Yale I. J 1, 36-38 (1923). But the guide to admiralty jurisdiction must be the needs of the sea or the needs of seagoing commerce."

This libel has no relation to a tort which arises out of navigation. It alleges an ordinary tort, just as if libelant had fallen on that part of the ramp above the water line. Thus, this action is not cognizable in admiralty and is without the maritime jurisdiction.

ORDER

Therefore, it is ORDERED that the exception to the libel be, and it is sustained and the motion to dismiss the libel is allowed.

It is further ORDERED that the foregoing shall constitute the findings of fact, conclusions of law and order for Decree in this action.

Proctors for the respondent will submit a proposed Decree in accordance with this Opinion.

The Clerk is directed to serve a copy hereof upon all proctors of record.

This the 5th day of March, 1964.

/S/ JOHN D. LARKINS, JR.

United States District Judge

IN THE

United States District Court

FOR THE EASTERN DISTRICT OF NORTH CAROLINA
ELIZABETH CITY DIVISION

No. 283 - Admiralty

HYLAS N. HASTINGS,
Libelant

v.

CARL D. MANN, t/a
Mann's Harbor Marina,
Mann's Harbor,
North Carolina
Respondent

DECREE

LARKINS, District Judge:

This cause having duly come on to be heard upon respondent's exception to the libel and motion to dismiss on the ground that the cause does not come within Admiralty jurisdiction, and both parties having submitted memoranda of law for the consideration of the Court, and the parties having stipulated as to the description and construction of the boat ramp in question,

a photograph of said ramp being submitted and attached thereto by the parties, said stipulation and photograph appearing of record herein, and the Court, after due deliberation, having rendered its Opinion and Order in writing, the same being filed on March 6, 1964, directing a decree dismissing the libel herein;

NOW, on motion of Martin Kellogg, Jr. and Gerald F. White, Proctors for the respondent, it is ORDERED, ADJUDGED AND DECREED that the opinion and order of this Court, heretofore filed herein on March 6, 1964, be and hereby is adopted as the Court's findings of fact and conclusions of law.

It is further ORDERED, ADJUDGED AND DECREED that this action in Admiralty be and the same hereby is dismissed and removed from the docket, and that the libelant be taxed by the Clerk with all costs of this action, including the docket fee for respondent's Proctors, as authorized by Title 28, USCA, Section 1923, and that the respondent have judgment and execution against said libelant for his, the respondent's costs.

It is further ORERED, ADJUDGED AND DECREED that unless this decree be satisfied or proceedings thereon be stayed by an appeal, as by law provided, the respondent have execution against the libellant for said costs, libelant's goods, chattels and lands, forthwith to satisfy this decree.

The Clerk is directed to serve a copy hereof upon all Proctors of record.

This the 19th day of March, 1964.

/S/ JOHN D. LARKINS, JR.

United States District Judge

To which ruling of the Court the libelant by his proctor, doth object and except.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9524.

Hylas N. Hastings,
Appellant,

versus

Carl D. Mann, t/a Mann's Harbor Marina,
Mann's Harbor, North Carolina,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AT ELIZABETH CITY. JOHN D. LARKINS, JR., DISTRICT JUDGE.

(Argued September 21, 1964. Decided January 11, 1965.)

Before HAYNSWORTH, BOREMAN and J. SPENCER BELL, Circuit Judges.

Walter B. Martin, Jr., (Vandeventer, Black, Meredith & Martin on brief) for Appellant, and Gerald F. White (Martin Kellogg, Jr., and Aydlett & White on brief) for Appellee.

HAYNSWORTH, Circuit Judge:

By a libel in Admiralty Hastings sought to recover damages for injuries he sustained when he slipped and fell upon a ramp designed for the launching of small boats in Pamlico Sound, North Carolina. At the time, he was attempting to launch his own small outboard motor boat, and he was standing in the navigable waters of the Sound when the accident occurred.

We think the District Court properly dismissed the libel as not being within the Admiralty jurisdiction.

The boat launching ramp, owned by Mann, the operator of the small boat marina, was provided for the convenience of his patrons in launching and retrieving their small boats, for which each patron paid a fee of one dollar. The ramp followed the slope of the land from a point some distance above high water to a point well below low water. No portion of it was afloat, for the underwater portion of the launching ramp was securely fastened to the bottom. It was an extension of the land, and there is no jurisdiction in Admiralty to award damages for injuries suffered upon it unless caused by a vessel.

Traditionally, Admiralty's jurisdiction to grant redress for maritime wrongs was limited to those in which the harmful effect of the wrong was suffered at sea. It was thus held in The Plymouth, 70 U. S. (3 Wall.) 20, that there was no jurisdiction in Admiralty to award damages against a vessel for loss caused by a fire which had spread to a pier and its associated warehouses from the vessel. Since the tort was consummated upon land and the injury suffered there, the tort was regarded as local in nature and not cognizable in Admiralty.

The rule of The Plymouth has been modified, of course, by the Admiralty Jurisdiction Extension Act of 1948.[1] That statute gives Admiralty jurisdiction of such torts when caused by a vessel on navigable waters. The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters.

In The Plymouth, the fire-damaged pier was treated as land. Since then, it has been uniformly held that piers, docks, wharfs and similar structures extending over navigable waters are extensions of land, though their use and purpose be maritime. Damage to such structures and personal injuries suffered by persons while upon such structures are not compensable in Admiralty, unless, under the 1948 Act, caused by a vessel on navigable waters.[2]

To come within the land extension rule, of course, the structure must be firmly attached to the land. A vessel moored to a dock does not become an extension of the land nor do other structures secured to the shore by cables, or other temporary means.[3]

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[1] 46 U.S.C.A. 740.

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[2] T. Smith & Son, Inc. v. Taylor, 276 U.S. 179; Cleveland Terminal & Valley R.R. Co. v. Cleveland Steamship Co., 208 U.S. 316; Netherlands American Steam Navigation Co. v. Gallagher, 2 Cir., 282 Fed. 171; American Export Lines, Inc. v. Revel, 4 Cir., 266 F.2d 82; McGuire v. City of New York, 192 F Supp. 866; 1 Benedict on Admiralty 354.

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[3] The Mackinaw, D.C. Ore., 165 Fed. 351; The M. R. Brazos, S.D.N.Y., Fed. Case No. 9898.

Lighthouses, beacons, buoys and other navigational aids are not encompassed within the land extension doctrine.[4] Usually, they are surrounded by water and they have historically been regarded as subjects of Admiralty jurisdiction. They are readily distinguishable from piers and wharves extending over navigable waters and designed and used for the purpose of providing access to vessels afloat for people and land based vehicles and equipment.

The launching ramp with which we deal differs, of course, from a pier or wharf, the seaward portions of which extend over navigable waters but the surfaces of which are not beneath them. That difference is immaterial. Launching ramps, both in their seaward and land portions, are as firmly fixed to the land as is the pier or the wharf. They are designed to permit land based trailers to approach to, or beyond, the water's edge so as to facilitate the launching or the recovery of the boats they are designed to carry. Their purpose and their use are as an extension of land, providing a firm means of closer approach to deep waters for boat-carrying, land based vehicles and for the people who handle them. In the application of the land extension doctrine, there appears no logical basis for distinction between a partially submerged ramp and a pier, the surface of which is dry.

The most closely analogous case we have found is that of The Professor Morse, D.C. N.J., 23 Fed. 803. It was there held that a marine railroad was an extension of the land. "Its character", said the Court, "is not changed because the ways ran down below the ebb and flow of the

[4] The Blackheath, 195 U.S. 361.

tide to facilitate the transfer of vessels from the water to the shore."

Other articles placed beneath navigable waters but affixed to the shore are not regarded as within Admiralty's jurisdiction. Thus, electric cables and pipe lines laid on the bottom beneath navigable waters and extending to the shore have been held to be extensions of land, so that damages for injury to them are not recoverable in Admiralty,[5] unless, of course, under the Admiralty Extension Act, the harm is caused by a vessel on navigable waters.

The fact that the libelant's feet were awash, when he slipped and fell on the ramp, does not alter the nature and character of the ramp or enlarge Admiralty's jurisdiction to award damages for injuries occurring upon it.[6]

The rights of the boat operator and the jurisdiction of Admiralty ought not to depend upon such empty distinctions as might be said to arise out of his immediate location on the launching ramp at the time of the injury. Whether, at the time the injury was sustained, he was above or below the high water mark, whether he was landward

[5] Nippon Yusen Kabushiki Kaisha v. Great Western Power Co., 9 Cir., 17 F.2d 239; The Russell No. 6, E.D.N.Y., 42 F. Supp. 904. (Disapproving earlier district court decisions to the contrary.)

[6] See Reinhardt v. Newport Flying Service Corp., 232 N.Y. 115, 133 N.E. 371, in which the injury to the claimant, who was waist deep in navigable waters, was held to be within Admiralty's jurisdiction only because the seaplane he was attempting to secure was held to be a vessel; McGuire v. City of New York, S.D.N.Y., 192 F. Supp. 866, in which the claim of a bather in navigable waters who stepped upon a sharp object on the bottom was held not cognizable in Admiralty.

or seaward of the actual edge of the water, his rights should be the same, and they should be determinable in the same court. Neither the purpose of the ramp nor that of the person using it varies when he moves from one portion of it to another. If his feet are awash, he is still standing upon an extension of the land in the same sense as is a worker upon a pier, who, when injured, is well seaward of both high and low water.

We think the District Court properly concluded that, since the submerged portion of the launching ramp was firmly affixed to the land, it is an extension of the land, and the plaintiff's injury is not cognizable in Admiralty.

Affirmed.

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IN THE

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OCTOBER TERM, 1964

No. 911

HYLAS N. HASTINGS, *Petitioner*

v.

CARL D. MANN, t/a Mann's Harbor Marina, Mann's Harbor, North Carolina, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENT, CARL D. MANN, IN OPPOSITION

GERALD F. WHITE
324 Carolina Building
Elizabeth City, North Carolina
Proctor for Respondent

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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OCTOBER TERM, 1964

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CARL D. MANN, t/a Mann's Harbor Marina, Mann's Harbor, North Carolina, *Respondent*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR RESPONDENT, CARL D. MANN, IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court below is reported in 226 F. Supp. 962. The opinion of the U. S. Court of Appeals for the Fourth Circuit is not yet reported. This opinion is printed in the appendix to the petition, beginning on page 1c.

JURISDICTION

The judgment of the United States Court of Appeals was entered in this cause on January 11, 1965. The petitioner relies upon the provisions of Title 28, USC Section 1254(1) to invoke the jurisdiction of this Court.

STATEMENT

The respondent, Carl D. Mann, calls special attention to Sections 2 and 4 of the Amended Libel, which Sections are the crucial parts thereof, insofar as the petition for writ of certiorari is applicable, and said Sections, appearing of record, read as follows:

> "2. *That the occurrences mentioned hereinafter occurred on a boat ramp* situated in Pamlico Sound at Mann's Harbor, North Carolina, while the libellant was attempting to launch a small outboard motor boat on or about April 9, 1963; said boat ramp being owned and operated at the time aforementioned by the respondent, Carl D. Mann. (Emphasis added)
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> "4. That on or about April 19, 1963, the libellant herein paid to the respondent or his duly authorized agent the sum of One Dollar ($1.00) in consideration for using the respondent's small boat ramp for the purpose of launching the libellant's small outboard motor boat; that while launching said small outboard motor boat *and while on respondent's boat ramp,* and while standing in the navigable waters of Pamlico Sound, due to the slippery and unsafe condition of respondent's boat ramp and due to the negligence and wrongdoing on the part of the respondent, its agents and employees, the libellant was caused to fall and sustain serious injuries which are permanent in nature." (Emphasis added)

The following stipulations, appearing of record, were entered into by Libellant and Respondent and adopted as facts by the District Court in its opinion filed on March 6, 1964:

> "1. *The ramp is constructed of creosoted lumber lying on the ground on the respondent's property,* and extends to and beyond the shore line into the water along the bottom approximately seven to eight feet depending upon the tide, the extreme end of the ramp under the water being about four feet below the surface of the water depending upon the tide. (Emphasis added)
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> 2. The ramp is flush and level with the ground attached to sills buried into the ground.
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> 3. The ramp does not float with the tide but is bolted and attached to the ground with stobs and creosote posts.
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> 4. The ramp is used to accommodate boat trailers which are backed onto the ramp by automobiles or trucks.
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> 5. Attached hereto is a photograph of the ramp."

On November 8, 1963, the respondent filed an exception to the libel and a motion to dismiss on the grounds that the United States District Court sitting in Admiralty did not have jurisdiction over the subject matter of the libel as set forth in the foregoing allegations and related stipulations. On March 6, 1964, the District Court filed its memorandum opinion, and on March 19, 1964, the District Court entered its final decree dismissing the libel. On appeal by the libellant to the United States Court of Appeals for the Fourth Circuit, the judgment of the District Court dismissing the libel was affirmed by said Appellate Court below.

QUESTION PRESENTED

Should the petition for writ of certiorari be denied in that there are no special and important reasons to allow the same and upon the holding of the United States Court of Appeals for the Fourth Circuit, predicated upon alleged and stipulated facts, that the District Court properly concluded that the boat ramp was firmly affixed to the land, is an extension of the land, and the libellant's injury is not cognizable in Admiralty?

ARGUMENT AND REASONS WHY THE PETITION FOR THE WRIT SHOULD BE DENIED.

The considerations governing review on certiorari, as set forth in Rule 19 of the Supreme Court Rules, do not, we submit, suggest any reason for granting the writ which is applicable in this case. We can find no special and important reasons calling for the exercise of sound judicial discretion so as to allow the writ. We will endeavor to substantiate our contention that the decision rendered by the United States Court of Appeals for the Fourth Circuit is in no manner in conflict with the decision of another Court of Appeals on the same matter, and that no important question of Federal law should be settled by this Court in this case, and that no Federal question has been decided which in any way conflicts with applicable decision of this Court, but, to the contrary, existing and applicable decisions of the Supreme Court of the United States give approval and sanction to the law and holding as laid down by the said Appellate Court below.

It seems to us that the petitioner has either overlooked or ignored the well-established doctrine or rule of land extensions as this concept has been repeatedly

and uniformly applied in holdings of the Circuit Courts and the Supreme Court of the United States. Chief Judge Haynsworth in his opinion in this case for the Appellate Court below makes the following significant and accurate statements:

> "In The Plymouth, the fire-damaged pier was treated as land. Since then, it has been uniformly held that piers, docks, wharfs and similar structures extending over navigable waters are extensions of land, though their use and purpose be maritime. Damage to such structures and personal injuries suffered by persons while upon such structures are not compensable in Admiralty, unless, under the 1948 Act, caused by a vessel on navigable waters."

We submit that the accuracy of the foregoing statements quoted from the opinion of Chief Judge Haynsworth, and their applicability to this case and factual situation cannot be effectively called into question. In the case of *Cleveland Terminal and Valley R.R. Co.* v. *Cleveland Steamship Co.*, 208 U.S. 316, 52 L. Ed. 508, 28 S. Ct. 414, the holding therein clearly enunciates the principle that land and extensions of land are one and the same when it comes to deciding Admiralty jurisdiction. In that case the following pertinent language appears:

> "But the bridges, shore docks, protection piling, piers, etc., pertain to the land. They were structures connected with the shore and immediately concerned commerce upon land. None of these structures were aids to navigation in the maritime sense, but extensions of the shore and aids to commerce on land as such."

The case of *T. Smith & Son, Inc.* v. *Taylor*, 276 U.S. 179, 48 S. Ct. 228, was an action for the death of a long-

shoreman working on a stage resting solely on a wharf, resulting when he was struck by a sling from a vessel and knocked into the navigable waters. In affirming the Court of Appeals decreeing that the case was not within Admiralty and Maritime jurisdiction, the Supreme Court of the United States said:

> "Plaintiff in error concedes that the stage and wharf on which deceased was working are to be deemed an extension of the land (Cleveland Terminal R.R. v. Steamship Co., 208 U.S. 316, 321, 28 S. Ct. 414, 52 L. Ed. 508, 13 Ann. Cas. 1215; Industrial Comm. v. Nordenholt Co., 259 U.S. 263, 275, 42 S. Ct. 473, 66 L. Ed. 933, 25 A.L.R. 1013), and that the state law would apply if he had been injured or killed by falling on the landing place. It argues that as no claim was made for injuries sustained while deceased was on land and as the suit was solely for death that occurred in the river, the case is exclusively within the admiralty jurisdiction. But this is a partial view that cannot be sustained. The blow by the sling was what gave rise to the cause of action. It was given and took effect while deceased was upon the land. It was the sole, immediate and proximate cause of his death. The G. R. Booth, 171 U.S. 450, 460, 19 S. Ct. 9, 43 L. Ed. 234. The substance and consummation of the occurrence which gave rise to the cause of action took place on land. The Plymouth, supra. This case cannot be distinguished from Johnson v. Chicago Elevator Co., 119 U.S. 388, 397, 7 S. Ct. 254, 30 L. Ed. 447, or Martin v. West, 222 U.S. 191, 196, 32 S. Ct. 42, 56 L. Ed. 159, 36 L.R.A. (N. S.) 592). The contention of plaintiff in error is without merit."

In a leading treatise on Admiralty, to wit, Benedict, on Admiralty, Vol. 1, Chapt. XV, Section 128A, page 354, the following statement of law appears with abun-

dant foot-noted authorities, including decisions of the Supreme Court of the United States:

> "Actions for tort resulting in personal injuries on land, as on a pier, or for damage to a bridge or to a pier, these being extensions of the land, . . . are not within the jurisdiction."

And in 2 C. J. S. Admiralty, Section 59, page 116:

> "A Court of Admiralty is without jurisdiction where the place of injury was on land, for example, on a wharf or dock, or in a tunnel under the water."

The petitioner cites *Weinstein* v. *Eastern Airlines, Inc.*, 316 F.(2d) 758 (1963), cert. denied 375 U.S. 940, 11 L. Ed. 2d 271, 84 S. Ct. 343, and *Interlake Steamship Co.* v. *Neilsen*, 338 F. 2d 879. These two cases do not involve the extension of land rule. In the *Weinstein case* the facts disclose that an aircraft crashed at sea. The Court of Appeals for the Third Circuit compared the aircraft crash into navigable waters to the dangers to persons and property arising out of the sinking of a ship or a collision between two vessels. In the *Interlake Steamship Company case* the facts disclose that the injury occurred in the navigable waters of Lake Erie, and no land extension such as a boat ramp or a dock or a pier caused the injury. We submit these two cases, having nothing whatever to do with the land extension doctrine, are not controlling nor applicable. In both of those cases the injury occurred on navigable waters. In the case now under consideration the alleged injury occurred on a land extension.

In his printed petition at page 5 the petitioner makes the mistaken assertion that "the Court below has limited the locality doctrine to torts occurring on vessels

on navigable waters." In making this statement, the petition then quoted the following statement from the opinion of the Court below entirely out of context:

> "The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters."

In refuting the interpretation and conclusion which the petitioner has chosen to derive from the foregoing quotation, we quote herein the more comprehensive statement of the Court below in context as the same appears on pages 2c and 3c of the Appendix to the printed petition of petitioner:

> "Traditionally, Admiralty's jurisdiction to grant redress for maritime wrongs was limited to those in which the harmful effect of the wrong was suffered at sea. It was thus held in The Plymouth, 70 U.S. (3 Wall.) 20, that there was no jurisdiction in Admiralty to award damages against a vessel for loss caused by a fire which had spread to a pier and its associated warehouses from the vessel. Since the tort was consummated upon land and the injury suffered there, the tort was regarded as local in nature and not cognizable in Admiralty.
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> The rule of The Plymouth has been modified, of course, by the Admiralty Jurisdiction Extension Act of 1948. That statute gives Admiralty jurisdiction of such torts when caused by a vessel on navigable waters. The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters."

From the foregoing quotation in proper context it is quite obvious that the Court below has not limited Admiralty jursidiction to torts occurring on vessels

on navigable waters. The Court below simply correctly stated the holding in *The Plymouth* that the pier, being fire damaged by a vessel, was treated as land; thus, there was no jurisdiction in Admiralty. Then the Court below explained that the holding of *The Plymouth* has been modified by Congressional enactment so that if such a tort is caused by a vessel on navigable waters, then there is jurisdiction in Admiralty, the Court pointing out that the holding and rule of *The Plymouth* is still applicable to limit Admiralty's jurisdiction when the instrumentality which caused the wrong to the land or land extension was not a vessel on navigable waters. This explanation by the Court below follows and fits in with its statement in its opinion on page 2c of petitioner's Appendix that "It (boat ramp) was an extension of land, and there is no jurisdiction in Admiralty to award damages for injuries suffered upon it, unless caused by a vessel".

The case of *Netherlands American Steam Navigation Co.* v. *Gallagher* (Second Circuit), 282 Fed. Rep. 171, presented the question involving the jurisdiction of the Courts of the United States in a suit for injury to a stevedore, while working on a pier. In holding that the United States District Court was without jurisdiction of the claim, and making particular reference to the Supreme Court decision in *The Rock Island Bridge Case*, the Court of Appeals for the Second Circuit said at page 176 of its opinion:

> "The injury to the plaintiff happened on the wharf, in other words, upon the land; for it is clearly established that wharves and bridges, *being fixed* and immovable, are a part of the land to which they are attached, whether they project over the water or not. Injuries done upon them are not maritime torts; consequently they are not

> within the Admiralty jurisdiction, because not done upon the sea. The Rock Island Bridge, 6 Wall. 213, 18 L. ed. 753; the Neil Cochran, 1 Brown's Adm. 162 Fed. Cas. No. 7,996; The Ottawa, Brown's Adm. 35€, Fed, Cas. No. 10,616. In the Rock Island Bridge Case the court held that, though bridges and wharves may aid commerce by facilitating intercourse on land, or the discharge of cargoes, they constitute no part of the high seas or navigable waters, and no maritime lein can arise with reference to them, as in the case of vessels, steamers, and rafts, and upon goods and merchandise thereon." (Emphasis added)

There is no material distinction between a pier and a ramp. Suppose at high tide navigable waters should slightly wash over the surface of a low built pier, and a person standing on the pier with his feet awash were to slip and injure his knee. Could it be said that a Court sitting in Admiralty would have jurisdiction simply because the injured person's feet were awash while he was standing on the surface of the pier—a land extension. It seems to us the answer to this analogous question is in the negative. Certainly, the same reasoning should apply to the ramp, "lying on the ground on the respondent's property" (See stipulation quoted herein in STATEMENT), and being fixed and immovable, for as Chief Judge Haynsworth said in the opinion for the Court below, appearing on page 6c of petitioner's Appendix:

> "If his feet are awash, he is still standing upon an extension of the land in the same sense as is a worker upon a pier, who, when injured, is well seaward of both high and low water."

To reason otherwise would create the anomalous situation of conferring Admiralty jurisdiction today and

taking it away tomorrow, depending upon the viscissitudes of the winds and tides at a given moment.

CONCLUSION

We conclude where we began. There is no special and important reason for a review in this case on writ of certiorari. Rule 19, Supreme Court Rules. The limits of the jurisdiction of Admiralty Courts applicable to this case have been properly and precisely defined by the Court below in harmony with pertinent decision of other Circuit Courts and under the law laid down by the Supreme Court of the United States. A review on writ of certiorari is not had merely to reaffirm ancient land marks in the law. It seems to us that the real effect of the petitioner's application for review on certiorari is to call in question and ask this Court to reconsider and overrule its holdings in *The Plymouth* and related decisions which have enunciated the principle that injuries occurring on land extentions--piers, docks, wharves and similar structures such as ramps—in the absence of a valid Congressional enactment, are not compensable in Admiralty. We respectfully ask this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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